



State of Rhode Island and Providence Plantations
RHODE ISLAND BOARD OF EDUCATION
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Enclosure 6b2
August 20, 2019

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Chair

August 20, 2019

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TO: Members of the Council on Elementary and Secondary Education

FROM: Amy Beretta, Appeals Committee Chair

RE: Approval of Appeals Committee Recommendation on the matter of
Richard Bruno v. Portsmouth School Committee

The Appeals Committee of the Council on Elementary and Secondary Education met on July 16, 2019, to hear oral argument on the appeal of the following Commissioner decision:

Richard Bruno v. Barrington School Committee

RECOMMENDATION: THAT, in the matter of Richard Bruno v. Portsmouth School Committee, the Commissioner's decision is affirmed, as presented.

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STATE OF RHODE ISLAND

**COUNCIL ON ELEMENTARY
AND SECONDARY EDUCATION**

RICHARD BRUNO

vs.

**PORTSMOUTH
SCHOOL COMMITTEE**

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DECISION

This is an appeal by Mr. Richard Bruno (“Mr. Bruno”) from the decision of the Commissioner of Education (“Commissioner”) dated April 18, 2019, dismissing Mr. Bruno’s petition entitled “Formal Dissatisfaction with Local/PHS Department Level of Review,” requesting that the Commissioner exercise administrative authority over the Portsmouth School Committee (“Portsmouth”), including terminating certain employees, ordering Portsmouth to implement specific trainings and programs, and order a re-write of the Portsmouth Code of Conduct.

The travel of this appeal is outlined in the Commissioner’s decision as follows. Mr. Bruno filed a complaint with the Rhode Island Department of Elementary and Secondary Education (“RIDE”) on or about April 10, 2018 requesting certain specific actions in response to his son’s death. Mr. Bruno’s son, a Portsmouth High School fifteen year old sophomore, died by suicide earlier that year. A copy of the complaint was also given to Portsmouth and the Superintendent informed Mr. Bruno that the Portsmouth School Committee engaged an independent investigator to look into the facts and circumstances of Mr. Bruno’s complaint. RIDE deferred to the Portsmouth investigation and took no action on the complaint at that time.

Following the investigation Portsmouth adopted certain recommendations including a recommendation not to re-appoint Mr. Ryan Moniz, whose conduct had been called into question, to his position as a coach with the football team. Mr. Bruno pursued efforts to determine what additional trainings and programs would be adopted by Portsmouth in response to his complaint, including meeting with the Superintendent and with the School Committee in Executive Session on July 17, 2018, but was not given an answer. Mr. Bruno was subsequently denied a copy of the investigator's report under the Access to Public Records Act.

Unable to obtain information regarding what additional actions Portsmouth would take in this matter Mr. Bruno filed another document with RIDE, this time entitled "Formal Dissatisfaction with Local/PHS Department Level of Review." In this document he outlined the specific actions he believed Portsmouth should take including termination of the employees named in his complaint, implementing the trainings and programs he recommended, re-writing the Code of Conduct, and denying him access to the investigatory report. In September and October of 2018 RIDE legal counsel attempted to mediate the issues with Portsmouth. After those efforts proved unsuccessful, legal counsel forwarded the document to the Commissioner with a request to assign a hearing officer to consider and resolve the items in Mr. Bruno's complaint. Portsmouth filed a motion to dismiss the hearing for lack of jurisdiction. The motion to dismiss was consolidated with a hearing on the merits and was heard on January 17, 2019.

At the hearing, Mr. Bruno argued that the complaint should not be dismissed because the Commissioner has the authority to take the actions he requested in his complaint through administrative oversight. Portsmouth responded that the Commissioner lacks authority to exercise such administrative oversight regarding Portsmouth's response to the complaint, including implementing Mr. Bruno's requested actions. Additionally, Portsmouth argued that

Mr. Bruno lacks standing to challenge Portsmouth's decision related to Mr. Moniz. Lastly, Portsmouth argued that it had taken all action it deemed necessary in the matter.

In the Decision dated April 18, 2019, the Commissioner determined that there was no jurisdiction for the Commissioner to exercise administrative oversight of the Portsmouth response to Mr. Bruno's complaint, including ordering the specific changes requested by Mr. Bruno in this matter. Noting that the Commissioner has authority to enforce provisions of school law, hear appeals from persons aggrieved by the decision of a school committee, and to exercise general supervision over local school committees, the Commissioner determined that no jurisdiction could be present where there is no statutory authority to exercise the comprehensive administrative oversight requested by Mr. Bruno. Further, the Commissioner found that Mr. Bruno lacked the requisite legal standing to bring a complaint regarding the actions taken with respect to Mr. Moniz. Finally, while Mr. Bruno did have standing regarding the Access to Public Records Act denial, the denial of access to the report didn't arise under a law relating to education, and therefore the Commissioner found no jurisdiction to consider an appeal of the denial. Mr. Bruno's complaint was denied and dismissed.

Mr. Bruno filed a timely appeal of the decision dismissing his complaint. On appeal, Mr. Bruno argued that the Commissioner possesses the authority to exercise administrative oversight of Portsmouth under both R.I.G.L. § 16-39-1 and § 16-39-2, and that he did possess standing to challenge Portsmouth decision. Finally, Mr. Bruno alleged bias by the Commissioner, pointing to specific language used in the decision dated April 18, 2019. In a point by point response, Portsmouth contends that each aspect of the Commissioner's decision is correctly decided, and asks the Council to uphold the decision.

The Council has reviewed the records, the briefs filed by the parties, and considered the arguments presented at oral argument. We note the standard of review for the Council, which is limited to a determination regarding whether the Commissioner's decision is "patently arbitrary, discriminatory, or unfair." Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975).

First, the Council looks to the determination that there was no jurisdiction present to determine that the Commissioner should exercise administrative authority over Portsmouth regarding its response to Mr. Bruno's complaint as he requested. While the Council doesn't take as narrow a view of the Commissioner's authority as put forth by Portsmouth, we do agree that absent a grant of specific statutory authority the RIDE Commissioner doesn't have direct administrative authority over local school departments. As noted in the decision, such "care, custody, and control" of the local school departments was placed with local school committees. R.I.G.L. § 16-2-9. The Commissioner is vested with implementing "broad policy", enforcing standards, and the exercise of "general supervision." R.I.G.L. § 16-60-6(4). We must disagree with Mr. Bruno that the statutes governing appeals, R.I.G.L. § 16-39-1 and § 16-39-2, allow the Commissioner to exercise administrative oversight, including but not limited to conducting interviews and seeking documents. *Appellant Brief at Page 6*. In an appeal hearing before the Commissioner's office, as is the case in this matter, the appointed hearing officer presides over an adversarial proceeding and doesn't exercise investigatory functions. As noted by the Commissioner, the burden of proof is on the parties. *Commissioner's Decision at page 7*. Therefore, we find no error in the conclusion that the Commissioner lacked jurisdiction to find that direct administrative control could be exercised in response to Mr. Bruno's complaint.

Next, the Commissioner found that Mr. Bruno didn't have the requisite legal standing to appeal the decision of Portsmouth with respect to Mr. Moniz. We must note the difficulty of applying the words used by the legal system to address standing in describing Mr. Bruno and this matter. When evaluating whether a party has standing we must look to whether they are "aggrieved." See Watson v. Fox et al., 44 A.3d 130, 136 (R.I. 2012) . We certainly understand why Mr. Bruno objects to not being referred to as someone "aggrieved" by these events. However, the Rhode Island Supreme Court has noted that it "is not sufficient by itself to render the [plaintiff] 'adversely affected' or 'aggrieved' . . . " Id. (quoting Blackstone Valley Chamber of Commerce v. Public Utilities Commission, 452 A.2d 931, 933 (R.I.1982)). A person must demonstrate "that the challenged action has caused him an injury in fact." Id. at 135. (quoting Rhode Island Ophthalmological Society v. Cannon, 113 R.I. 16, 22, 317 A.2d 124, 128 (1974)). An "injury in fact must be 'an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent . . . " Narragansett Indian Tribe v. State, 81 A.3d 1106, 1109 (R.I. 2014). (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Here, we must agree with the Commissioner that Mr. Bruno has not demonstrated an injury in fact by the decision of Portsmouth not to re-appoint Mr. Moniz to his coaching position, and therefore lacks the necessary standing.

Finally, we have received no evidence of bias in the Commissioner's decision. Mr. Bruno points to bias evidence in the use of language used to describe his efforts in this matter, specifically that his requests for changes at Portsmouth were consistent and that his written complaint was extensive. *Appellant Brief at page 5*. Notably, Mr. Bruno doesn't allege that the choice of words is inaccurate, but rather that they have a negative connotation. We disagree. Nothing in the decision demonstrates bias on the part of the Commissioner.

Having considered all the arguments presented by Mr. Bruno, we find no error in the Commissioner's decision that requires the Council to vacate the decision or order implementation of the actions outlined in Mr. Bruno's complaint. No part of the Commissioner's decision is "patently arbitrary, discriminatory, or unfair", the standard of review in appeals to the Council. Altman v. School Committee of the Town of Scituate, 115 (R.I.) 399, 405 (1975).

For the reasons stated herein, the decision of the Commissioner is affirmed.

The above is the decision recommended by the Appeals Committee after due consideration of the record, memoranda filed on behalf of the parties and oral arguments made at the hearing of the appeal on July 16, 2019.

Council on Elementary and Secondary Education

Barbara A. Cottam, Chair of the Board of Education

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Amy Beretta, Appeals Committee Chair

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